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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,570	11/01/2001	Qiang Cao	25-3-10	4228

7590

08/04/2005

Docket Administrator (Room 3J-219)
Lucent Technologies Inc.
101 Crawfords Corner Road
Holmdel, NJ 07733-3030

EXAMINER

HAILE, FEBEN

ART UNIT

PAPER NUMBER

2663

DATE MAILED: 08/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/002,570	CAO ET AL.	
	Examiner	Art Unit	
	Feben M. Haile	2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9 and 12-26 is/are rejected.
- 7) ☒ Claim(s) 8, 10 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>November 11, 2001</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Europe on November 22, 2000. It is noted, however, that applicant has not filed a certified copy of the application as required by 35 U.S.C. 119(b).

Claim Objections

2. Claims 6, 13 –16, and 23 are objected to because of the following informalities:

Regarding claim 6, on page 28 lines 6-7, the phrase “**power is comprising a**” should be replaced by **-power comprises a-**.

Regarding claim 13, on page 28 line 29, the phrase “**channel in downlink**” should be replaced by **-channel in the downlink-**.

Regarding claim 14, on page 29 line 2, the phrase “**user on in an uplink**” should be replaced by **-user in an uplink-**.

Regarding claim 15, on page 29 line 7, the phrase “**regard to predefined flow's**” should be replaced by **-regard to a predefined flow's-**.

Regarding claim 16, on page 29 line 13, the word “**scheduls**” should be replaced by **-schedules-**.

Regarding claim 23, on page 30 line 16, the word “**UTMS**” should be replaced by **-UMTS-**.

Appropriate correction is required.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 1-5, 7, and 15-22 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-2, 5-6, 8, 11, 13-14, 16-17, and 20-23 of Published Application No. 2002/0181436.

This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 6, 9, 18, 20, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 and 10 of Published Application No. 2002/0181436, hereinafter referred to as Mueckenheim et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Regarding claims 6 and 18, Mueckenheim et al. discloses adjusting of the transmission power is comprising an adjustment step using the respective **current** transmission and used data rate (**claim 10**), which is an obvious variation between using a previous or current transmission power.

Regarding claims 9 and 20, Mueckenheim et al. discloses ensuring a minimum data transmission **power** and/or a maximum data transmission **power** for a user equipment (**claim 7**), which is an obvious variation between the QoS attributes rate and power.

Regarding claim 26, Mueckenheim et al. discloses the limitations of claim 1.

Although Mueckenheim et al. discloses does not explicitly disclose implementation software for performing claim 1, it is appreciated by one of ordinary skill in the art that various modifications, such as software programs, are possible in light of the above teachings without departing from the scope of the invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 12-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of Published Application No. 2002/0181436, hereinafter referred to as Mueckenheim et al. in view of Love et al. (US 2001/0040877), hereinafter referred to as Love.

Regarding claim 12, Mueckenheim et al. discloses the limitations of claim 1.

Mueckenheim et al. fails to teach scheduling data flows on a downlink shared channel of a UMTS-System.

Love discloses a communications system with layer structures similar to that of a UMTS network (**page 2 paragraph 0020**) that does scheduling for a common shared channel using measurements provided by mobile units (**page 2 paragraph 0025**).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mueckenheim et al. to incorporate the method of scheduling taught by Love. The motivation being an improved method for dynamic scheduling via channel quality feedback.

Regarding claim 13, Mueckenheim et al. discloses the limitations of claim 1.

Mueckenheim et al. fails to teach scheduling data flows for different users on a dedicated channel in downlink direction of a UMTS-System.

Love discloses a communications system with layer structures similar to that of a UMTS network (**page 2 paragraph 0020**) that does scheduling using measurements provided by mobile units for a forward dedicated control channel (**page 2 paragraph 0026**).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mueckenheim et al. to incorporate the method of scheduling taught by Love. The motivation being an improved method for dynamic scheduling via channel quality feedback.

This is a provisional obviousness-type double patenting rejection.

6. Claim 14 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of Published Application No. 2002/0181436, hereinafter referred to as Mueckenheim et al. in view of Lintulampi et al. (US 6747962), hereinafter referred to as Lintulampi.

Regarding claim 14, Mueckenheim et al. discloses the limitations of claim 1.

Mueckenheim et al. fails to teach scheduling data flows for a single user on in an uplink direction of a UMTS-System.

Lintulampi discloses a UMTS with a data connection between a mobile station and a support node (**column 1 lines 45-47**) where the network schedules all uplink flows for a mobile station (**column 2 lines 58-60**).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mueckenheim et al. to incorporate the method of scheduling taught by Lintulampi. The motivation being to increase the flexibility of uplink resource allocation for a mobile station.

This is a provisional obviousness-type double patenting rejection.

7. Claim 23 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 13 of Published

Application No. 2002/0181436, hereinafter referred to as Mueckenheim et al. in view of Ehrstedt et al. (US 6,901,065), hereinafter referred to as Ehrstedt.

Regarding claim 23, Mueckenheim et al. discloses the limitations of claim 15.

Mueckenheim et al. fails to teach a UMTS-system.

Ehrstedt discloses scheduling of packets for transmission over a UMTS network (column 1 lines 9-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the system of Mueckenheim et al. into the UMTS network taught by Ehrstedt. The motivation being a packet-based based transmission of text, digitized voice, video, and multimedia at data rates up to 2 megabits per second that offers a consistent set of services to mobile computer and phone users no matter where they are located in the world.

This is a provisional obviousness-type double patenting rejection.

8. Claims 24-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 13 of Published Application No. 2002/0181436, hereinafter referred to as Mueckenheim et al. in view of Ehrstedt et al. (US 6,901,065), hereinafter referred to as Ehrstedt, in view of Cudak et al. (US 6,801,512), hereinafter referred to as Cudak.

Regarding claim 24, Mueckenheim et al. discloses the limitations of claim 15.

Mueckenheim et al. fails to teach a base transceiver station comprising a transceiver unit.

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Ehrstedt discloses a BTS (**column 1 lines 51-52**) but fails to teach a transceiver unit.

Cudak teaches a BTS comprising a transceiver (**figure 16 unit 1602 and column 10 line 36**).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mueckenheim et al. to incorporate the BTS as taught by Ehrstedt. The motivation being a BTS contains the transmit and receive technology for communicating in a mobile telecommunications system. It would have further been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Mueckenheim et al. and Ehrstedt to incorporate the transceiver unit within the BTS as taught by Cudak. The motivation being that one component performing transmitting and receiving functions eliminates the cost and complexity of having two components performing these functions.

Regarding claim 25, Mueckenheim et al. discloses the limitations of claim 15.

Mueckenheim et al. fails to teach a mobile station comprising a transceiver unit.

Ehrstedt discloses a mobile terminal (**column 1 lines 51-52**) but fails to teach a transceiver unit.

Cudak teaches a MS comprising a transceiver (**figure 17 unit 1702 and column 11 line 3**).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mueckenheim et al. to incorporate the mobile terminal as taught by Ehrstedt. The motivation being a BTS contains the transmit and receive

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technology for communicating in a mobile telecommunications system. It would have further been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Mueckenheim et al. and Ehrstedt to incorporate the transceiver unit within the MS as taught by Cudak. The motivation being The motivation being that one component performing transmitting and receiving functions eliminates the cost and complexity of having two components performing these functions.

This is a provisional obviousness-type double patenting rejection.

Allowable Subject Matter

9. Claims 8, 10-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- a) Ono et al. (US 20030133457), Packet Scheduling Method and Apparatus for Downlink Transmission to Mobile Terminals
- b) Bedekar et al. (US 6763009), Down-link transmission scheduling in CDMA data networks
- c) Liu et al. (US 20040160936), Method of Scheduling on Downlink and Transmitting on Uplink Dedicated Channels


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Feben M. Haile whose telephone number is (571) 272-3072. The examiner can normally be reached on 6:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571) 272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JH 07/20/2005


RICKY NGO
PRIMARY EXAMINER

7/15/05